

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROGERS SMITH and WINONA SMITH, §
Individually and as Heirs of the Estates of §
ROGERS SMITH III, Deceased, and §
REKESHA HOPKINS, Deceased; GEORGIA §
RANDLE, KARRY BROWN, MARGARET §
RANDLE, JEREMY RANDLE, and TERRIE §
GREEN, as Next Friend of K.R., a minor, §
Individually and as Heirs of the Estate of §
KAVEN RANDLE, Deceased, §

Plaintiffs, §

V. §

CIVIL ACTION NO. H-08-3565

ROBIN AMERICA, INC. d/b/a SUBARU- §
ROBIN, FUJI HEAVY INDUSTRIES U.S.A., §
INC., HOME DEPOT, U.S.A., INC., THE §
COLEMAN COMPANY, INC., MEAD §
BRADLEY, Individually and POWERMATE §
CORP., §

Defendants. §

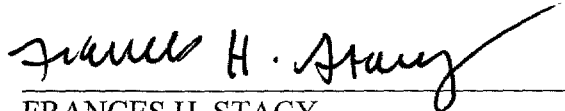
ORDER

Before the Magistrate Judge upon referral from the District Judge are Defendant Home Depot U.S.A., Inc.'s Motions for Leave to File its Original Cross Claim against Robin-America, Inc. d/b/a Subaru-Robin (Document No. 48) and against Fuji Heavy Industries USA, Inc. (Document No. 49). In their joint response to the motion (Document No. 52), Defendant Fuji Heavy Industries U.S.A., Inc. and Robin-America, Inc. argue that the motions should be denied because: (1) Home Depot is no longer a party to this suit, and therefore it cannot assert a cross-claim; and (2) the indemnification cross claim Home Depot seeks to assert is futile.

Having considered the motion, the response, the fact that the live complaint in this case – Plaintiff's Fourth Amended Complaint – names Home Depot U.S.A., Inc. as a defendant, the absence of an Order dismissing Home Depot U.S.A., Inc. as a defendant, and the inability to determine at this stage whether Home Depot U.S.A., Inc. could maintain a viable cross claim for indemnification under Chapter 82 of the Texas Civil Practice and Remedies Code, it is

ORDERED that Defendant Home Depot U.S.A., Inc.'s Motions for Leave to File its Original Cross Claim against Robin-America, Inc. d/b/a Subaru-Robin (Document No. 48) and against Fuji Heavy Industries USA, Inc. (Document No. 49) are both GRANTED.

Signed at Houston, Texas, this 15th day of October, 2009.



FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE